

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 8913 of 2005

Between:

- 1 Smt. Kandi Priya Darsini, W/o. K. Ravi Sankar,
R/o. 37-1-346 Trunk Road, Ongole, Prakasam District.
- 2 Smt. Devarapu Jayasree, W/o. D. Sai Prasad,
R/o. 45-1-141 IP Road, Ongole, Prakasam District.

..... PETITIONERS

AND

- 1 The Commissioner, Nellore Municipal Corporation, Nellore, Nellore District
- 2 The District Collector, Nellore District, Nellore.
- 3 The Mandal Revenaue Officer, Nellore, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or direction preferably in the nature of writ of Mandamus declaring the action of the respondents in seeking to acquire and demolish marked portion of the petitioners building Priya Towers in Ward No.24, Trunk Road, Dargamitta, Nellore in an extent of 587.5 Sq. Yards and 408.75 Sq. Yards out of 2205 Sq. Yards in Plot No. 13,14 and 15 of LP No.204/80 in Old"Survey No. 1866/4 Resurvey No. 1576/1045 and Old Survey No. 1867/1 Resurvey No. 1576/1049 of Dargamitta, Nellore Bit-I, CAS No. 562/2 without following the procedure of law as illegal, arbitrary, violation of principles of natural justice and contrary to the provisions of the Municipalities Act and the judgment reported in 2000 (5) ALT (DB) 246 and consequently direct the respondents not to take steps or indulge in any acquisition or demolition of the above said property in the interest of justice and pass.

Counsel for the Petitioner:MR.K.JAYA KUMAR

Counsel for the Respondent No.1: MR.S.NAGESWARA REDDY

Counsel for the Respondents 2 &3: G.P. for Revenue.

The Court, at the admission stage, made the following :

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ORDER:

Heard the learned counsel for the petitioners and the learned standing counsel appearing for the respondents.

The petitioners seek a Writ of Mandamus directing the respondents not to acquire and demolish the marked portion of the petitioners building Priya Towers in Ward No.24, Trunk Road, Dargamitta, Nellore in an extent of 587.5 Sq.yards and 408.75 Sq.yards out of 2205 Sq.yards in Plot No.13, 14 and 15 of LP No.204/80 in Old Survey No.1866/4 Resurvey No.1576/1045 and Old Survey No.1867/1 Resurvey No.1576/1049 of Dargamitta, Nellore Bit-I, CAS No.562/2, without following the procedure of law as arbitrary and illegal.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P. No. 21198 of 1997 and batch, dated 03.02.1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.
2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for

explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.
4. If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.
5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.
6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures.

The learned standing counsel appearing for the respondents does not dispute the above legal position.

Accordingly, the writ petition is disposed of directing the respondents not to demolish the structures in question without following the guidelines issued by

the Division Bench in the above writ petition. No costs.

20th April 2005.

BCS

Note:

Issue wire at party's cost.

B/o

BCS

ASSISTANT REGISTRAR

// True Copy//

SECTION OFFICER.

To

- 1 The Commissioner, Nellore Municipal Corporation, Nellore, Nellore District
- 2 The District Collector, Nellore District, Nellore.
- 3 The Mandal Revenaue Officer, Nellore, Nellore District.
4. Two C.Cs. to GP for Revenue, High Court Buildings, Hyderabad, (OUT)
5. Two CD copies.